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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,779	08/20/2001	Joshua Browning	H-508	5444

7590 01/05/2004
Mark Levy
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19 Chenango Street
Binghamton, NY 13901

EXAMINER

LEE, EDMUND H

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/932,779

Applicant(s)

BROWNING ET AL.

Examiner

EDMUND H. LEE

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: SEE ATTACHMENT.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1-7 and 12-18.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

EDMUND H. LEE
Primary Examiner
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ATTACHMENT TO ADVISORY ACTION

1. Applicants' arguments filed 12/11/03 have been fully considered but they are not persuasive. Applicants' after-final amendment has not been entered because it raises 1) a new issue that require further consideration and search, and 2) a new matter issue. In regard to the issues that require further consideration and search, they include using a single sheet of material with an outer dimension being greater than the inner dimension of the cavity (claims 1 and 12); creating a vacuum capable of solely deforming the material (claims 1 and 12); and constraining the material about the flange portion by means of a retaining flange (claims 3 and 14). In regard to the issue of new matter, the step of creating a vacuum capable of solely deforming the material is not support by the instant disclosure. There is no mention in the instant disclosure of only using a vacuum to deform the material.

Applicants' arguments are moot since they are dependent on entry of the after-final amendment filed 12/11/03 that has not been entered. It should be mentioned, however, that Peters et al do teach a vacuum thermoforming method as evident at col 11, Ins 57-60. Also, Peters et al teach using a sheet of material, which can be cut from a blank sheet into a proper size blank (col 8, Ins 26-35). This teaching constitutes placing a sheet in a vacuum mold wherein the sheet being greater than the inner dimensions of the vacuum mold cavity. Applicants also argue that Graefe teaches using a laminate whereas the instant invention is for a single layer product. This argument is misplaced because the instant claimed invention discloses using a single sheet of material. A single sheet of material does not mean a single layer of material.

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In regard to applicants' other arguments concerning Graefe, applicant is reminded that the instant claimed invention is open-ended.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDMUND H. LEE whose telephone number is 571.272.1204. The examiner can normally be reached on MONDAY-THURSDAY FROM 9AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on 703.305.5493. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0661.

EDMUND H. LEE
Primary Examiner
Art Unit 1732


12/30/04

EHL